

CONTRACT FOR PROFESSIONAL SERVICES

Contract No. _____

This Contract is entered into this _____ day of October, 2015 by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City"), and JC Cullen, Inc., an Arizona corporation doing business as Niles Radio Communications ("Contractor").

WHEREAS, the City of Flagstaff desires to receive and Contractor is able to provide professional services;

NOW THEREFORE, in consideration for the mutual promises contained herein, the City and Contractor (the "parties") agree as follows:

SERVICES

1. Scope of Work: Contractor shall provide the professional services generally described as follows:

Microwave Radio Networking Services

and as more specifically described in the scope of work attached hereto as Exhibit A, which includes Special Terms and Conditions.

2. Schedule of Services: Contractor shall perform all work per the schedule set forth in Exhibit A.
3. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B are hereby incorporated by reference by reference and shall apply to performance of this Contract, except to the extent modified in Exhibit A.
4. Key Personnel/Subcontractors: Contractor's Key Personnel, Subcontractors (if any), and contact information are designated in Exhibit A. Key Personnel are those employees whose license number and signature will be placed on key documents and those employees who have significant responsibilities for completion of the services. The City Representative for this contract has the right to approve any proposed substitution of Key Personnel or Subcontractors.

CITY RESPONSIBILITIES

5. City Representative: The City Representative is Ladd Vagen, Information Technology Director, or his/her designee. All communications to the City shall be through the City Representative. City Representative is responsible for bringing any request for a contract amendment or price adjustment to the attention of the City Buyer.
6. City Cooperation: City will cooperate with Contractor by placing at its disposal all available information concerning the City, City property, or the City project reasonably necessary for Contractor's performance of this Contract.

CONTRACT TERM

7. Contract Term: The Contract shall be effective as of the date signed by both parties. Performance shall commence within ten (10) days from the City's issuance of the Notice to Proceed, and shall be completed within 84 weeks from the completion of Phase PZ consistent with the Schedule of Services.

8. Renewal: This Contract may be renewed for up to one additional five (5) year term by mutual written consent of the parties. The City Manager or his designee (the Purchasing Director) shall have authority to approve renewal on behalf of the City.
9. Termination: This Contract may be terminated pursuant to the Special Terms and Conditions attached hereto.

PAYMENT

10. Compensation: Contractor shall be paid for satisfactory performance of the work, in accordance with the Compensation Schedule attached hereto as part of Exhibit A.
11. Price Adjustment: If price adjustments are permitted (see Exhibit A), any price adjustment must be approved by the City in writing as a formal Contract Amendment. The City Council must approve the price adjustment if the annual contract price exceeds \$50,000; otherwise the City Manager or his designee (the Purchasing Director) shall have authority to approve a price adjustment on behalf of the City.

DATA AND RECORDS

12. City Ownership of Document and Data: Any original documents prepared or collected by Contractor in performance of this Contract such as models, samples, reports, test plans, survey results, graphics, tables, charts, plans, maps, specifications, surveys, computations and other data shall be the property of City ("City's work product"), unless otherwise agreed by the parties in writing. Contractor agrees that all materials prepared under this Contract are "works for hire" within the meaning of the copyright laws of the United States and hereby assigns to the City all rights and interests Contractor may have in the materials it prepares under this Contract, including any right to derivative use of the material.
13. Re-Use. City may use City's work product without further compensation to Contractor; provided, however, City's reuse without written verification or adaption by Contractor for purposes other than contemplated herein is at City's sole risk and without liability to Contractor. Contractor shall not engage in any conflict of interest nor appropriate any portion of City's work product for the benefit of Contractor or any third parties without City's prior written consent.
14. Delivery of Document and Data: Upon termination of this Contract in whole or part, or upon expiration if not previously terminated, Contractor shall immediately deliver to City copies all of City's work product and any other documents and data accumulated by Contractor in performance of this Contract, whether complete or in process.

INSURANCE

15. Insurance: Contractor shall meet insurance requirements of the City, set forth in Exhibit C.

MISCELLANEOUS

16. Notice: Any notice concerning this Contract shall be in writing and sent by certified mail and email as follows:

To the City:

Ladd Vagen, I.T. Director
City of Flagstaff
211 W. Aspen
Flagstaff, Arizona 86001
lvagen@flagstaffaz.gov

With a copy to:

Rick Compau, C.P.M., CPPO, CPPB
Procurement Director
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, Arizona 86001
rcompau@flagstaffaz.gov

To Contractor:

Kelly Cullen
Niles Radio Communications
1602 N. East Street
Flagstaff, Arizona 86004

With a copy to:

John Lindsey
Niles Radio Communications
1602 N. East Street
Flagstaff, Arizona 86004

17. Authority. Each party warrants that it has authority to enter into this Contract and perform its obligations hereunder, and that it has taken all actions necessary to enter into this Contract.

CONTRACTOR

Print name:_____

Title:_____

CITY OF FLAGSTAFF

Print name:_____

Title:_____

Attest:

City Clerk

Approved as to form:

City Attorney's Office

EXHIBIT A SCOPE OF WORK

SPECIAL TERMS AND CONDITIONS (additions, modifications and clarifications to attached Contractor's Statement of Work (SOW) and Maintenance Services):

1. **FINAL DESIGN OF NETWORK.** Contractor's Statement of Work and Maintenance Services (Exhibit A) proposes a microwave network with preliminary engineering path studies on 20 individual path terminating locations. The proposed microwave network and preliminary engineering path networks are conceptual in nature. Contractor's final design must be approved by the City's representative (Ladd Vagen) and formally accepted by City. Contractor's final design must be coordinated with the City Community Development Department and comply with the City Zoning Code and any applicable County zoning codes.
2. **PERFORMANCE.** The final design shall be sufficient to meet City operational needs and shall set forth minimum technical performance standards. The project as completed shall meet or exceed performance standards. The project as completed will enable Contractor to provide Dedicated Internet Access services to City.
3. **SCHEDULE OF SERVICES.** (See SOW for references to Phases)

Phase PZ Zoning Approvals (Undetermined period)

Zoning Approvals. Contractor shall identify, apply for, and obtain necessary zoning approvals for microwave radio/telecommunications structures prior to proceeding to Phase 1 and City acceptance of final design. No set time period is set for completion of Phase PZ, but the parties shall proceed with due diligence and effort to complete this Phase PZ as soon as possible.

First Priority – McMillan Mesa. As first priority, Contractor will apply for a conditional use permit for replacement of the telecommunications structure on McMillan Mesa. If requested by City, Contractor may be required to attend a Work Session with City Council to obtain direction as to considerations as to design, specifically as to the proposed 100 foot tower McMillan Mesa. Contractor has been advised that there may be difficulties in obtaining zoning approval for a 100 foot tower on McMillan Mesa, and the network design will need to conform to any zoning approval/limitations on height or other conditions. Contractor will also contact Guardian Ambulance to determine if there is any availability on its 72 foot tower on Cedar for one or more microwave dishes, recognizing that information will be requested as part of the approval process for any new structure on McMillan Mesa.

City Utilities Department. Contractor will also coordinate design work with the City Utilities Department which is working on a separate project involving microwave radio/telecommunications structures, and look for opportunities to minimize City operational costs and/or zoning approvals.

Compilation. A complete set of all zoning submittals and approvals (including staff reports and final permits) will be provided to City.

Phase 1 Network Path and System Engineering (16-20 weeks)

Field Study. During Phase 1 Contractor will travel to each of the proposed network locations and verify line of site conditions, mounting limitations and requirements, and on site equipment requirements, as well as obstructions along the proposed paths.

Soils Analyst. Contractor shall provide City with qualifications and experience of a proposed soils analyst subcontractor, which shall be subject to City's approval. Contractor shall provide City with a copy of any soils analysis.

Frequency Coordination. During Phase 1 Contractor will engage a third party (Comsearch, an FCC Frequency Coordinator) who controls the frequency coordination process between all users and the FCC (as mandated by the FCC) with the engineering system requirements. Contractor in consultation with City will select radio frequencies for proposed paths, provide a Prior Coordination Notification (PCN) letter to every potentially affected licensee (a 30 day process), handle all technical issues, potential interference and re-engineering requirements pending frequency availability, and then prepare but not yet submit the licenses to the FCC for final licensing. Each PCN will be issued in name of City and is good for a period of up to one year, after which the Contractor must either renew the coordination for a fee or file for an FCC license.

Formal Acceptance of Final Design. At final design there should be no technical issues remaining and paths confirmed. Contractor's final design must be accepted by the City's representative (Ladd Vagen) before proceeding to Phase 2. Prior to acceptance the proposed final design will also be reviewed by the City Engineer (Rick Barrett) and City Planning Development Manager (Neil Gullickson, AICP) for purposes of verifying that requirements of Phase 1 have been met before moving to Phase 2. City's acceptance is not determination that the design is satisfactory to meet City operational needs and performance, which is the sole responsibility of Contractor.

Phase 2 (Equipment Acquisition and Site Preparation) (12-16 weeks)

Equipment Lists. Equipment lists will be developed in Phase 1, as described in the Statement of Work. Once final design is accepted by the City, and FCC frequency coordination approvals have been obtained, the project is in Phase 2 and Contractor shall provide the "final" equipment lists to City. Equipment lists will identify which items are "special order" (something other than in standard manufacturer's catalog) and delivery times. Contractor advises some "special order" equipment may take up to 180 days for delivery.

Purchase of Equipment. The parties anticipate that most or all of the required Radio Equipment and Antennas, Aquaplex Antenna Mounting Hardware, and associated Installation and Configuration Hardware for the project (noted in the Proposed Budget) shall be purchased by the City pursuant to Contractor's state cooperative purchase contract, **Arizona State Contract ADSP013-055855** as may be amended. City and Contractor will enter into a separate cooperative purchase contract and invoices issued will reference the same. All terms and conditions, including but not limited to warranties under that cooperative purchase contract shall apply.

Termination/Stop Work Order. Once a City purchase order for a "special order" is properly issued by Contractor and received by the manufacturer, generally the purchase

is not cancellable; however, City may terminate a purchase of equipment pursuant to terms and conditions of the ADSPO-13-0055855 (see Section 8, page 29 of Uniform Terms and Conditions) and Contractor is required to take all reasonable steps to minimize the incurrence of costs. City is liable for payment of any equipment order which cannot be cancelled or returned to manufacturer.

Packing and Shipping. Per ADSPO-13-0055855 (see Section 3.13, page 39 of Uniform Instructions to Offerors), unless otherwise stated in the Solicitation, all prices shall be F.O.B. and shall include all freight, delivery and unloading at the destination(s). Per Niles Radio Communications Response Questionnaire, page 5, "customers may have equipment delivered by any means desired." Accordingly, City will require Contractor to comply with its Standard Terms and Conditions, restated here for convenience.

10. PACKING AND SHIPPING: Contractor shall be responsible for industry standard packing which conforms to requirements of carrier's tariff and ICC regulations. Containers shall be clearly marked as to lot number, destination, address and purchase order number. All shipments shall be F.O.B. Destination, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001, unless otherwise specified by the City. C.O.D. shipments will not be accepted.

11. TITLE AND RISK OF LOSS: The title and risk of loss of material shall not pass to the City until the City actually receives the material at the point of delivery, and the City has completed inspection and has accepted the material, unless the City has expressly provided otherwise in the Contract.

Liability Arising from Possession and Control. Equipment will be shipped to Contractor pending acceptance and installation. Following acceptance, City will own title and insure the equipment; provided, however, Contractor shall also insure the equipment while stored on Contractor's property and in Contractor's possession and is liable for any loss occurring while in Contractor's possession or control. Contractor will undertake commercially reasonable measure to safeguard the equipment.

Purchase of McMillan Mesa Tower/Cabinet. Contractor and/or City will endeavor to find a competitively bid supplier for the McMillan Mesa Tower/Cabinet, and if none is available, City may require such expense to be competitively bid pursuant to formal procurement process, as contemplated by the City Procurement Code Manual for purchases in excess of \$50,000. (This equipment is not available under the Arizona State Contract ADSPO13-055855)

Filing for FCC Licenses. Contractor anticipates filing for FCC licenses upon ordering equipment. Each license when filed with FCC must be placed into service within one (1) year, although some frequencies have a 6 month period and some 18 months. Contractor will coordinate construction schedules and filings to avoid violation of FCC rules.

4. COMPENSATION. The compensation to be paid to Contractor is generally described in the Proposed Budget in Contractor's proposal, but payment will be based on actual reasonable costs submitted and approved in advance by City. Contractor is requested to assist City in keeping track of project costs. Anticipated payment schedule is as follows:

- a. Zoning Approvals. Contractor will incur costs related to obtaining zoning approvals. Contractor's time will be billed per its hourly rates for labor set forth in Arizona State Contract ADSP013-055855) and invoices should be submitted monthly to City for payment.
 - b. Preliminary Engineering Path Studies. Contractor will invoice City \$3,600.00 upon execution of this Contract for preliminary engineering work completed. This includes processing of 676 potential paths narrowed down to the 20 paths described in the conceptual design.
 - c. Field Study. Upon completion of the field study, Contractor will invoice City for work completed, estimated to cost \$7,800.00.
 - d. Frequency Coordination Fees. Frequency coordination fees will be between \$18,725.00 and \$28,000.00.
 - e. Reimbursables. Contractor may submit invoices to the City for reimbursement of any applicable fees on a monthly basis, and payment is due within thirty (30) days. Examples of reimbursable include: zoning application fees, building permit fees, soils analysis, frequency coordination fees, Federal Communications Commission ("FCC") license fees, Federal Aviation Administration ("FAA") approval fees.
 - f. Equipment. Purchases of equipment pursuant to the Arizona State Contract ADSP013-055855) will be paid pursuant to the terms thereof.
5. CHANGE ORDERS. Any change orders must be approved by the City's Representative and the Procurement Director, and shall be in a written form approved by the Procurement Director.
 6. FCC LICENSES. All FCC licenses obtained pursuant to this Contract shall be issued in the name of the City and shall belong to City. Copies will remain on file with City. Contractor is responsible for notifying City of any renewal requirements.
 7. RENTAL OF SPACE ON CONTRACTOR'S FACILITIES. The conceptual design contemplates that City will lease space on Contractor facilities at the rental rates set forth in the proposal. Contractor and City shall negotiate and agree upon final form of lease agreement for City to lease space on any of Contractor's facilities, including those on Mt. Elden necessary and part of the final design. The lease term shall be 30 years, with City option to terminate with at least 30 days' written notice without further penalty. The initial rental rates during the first year will be consistent with rates proposed, and the parties will agree upon reasonable cost adjustments to rental rates pursuant to the Consumer Price Index or other satisfactory measure for the remainder of the lease term, to be set forth in the lease. The Cities will complete negotiation of the form of lease during Phase 3. The leases will commence upon project completion (when the network is placed into service).
 8. TERMINATION FOR CONVENIENCE. City reserves the right to terminate this contract for convenience and the City's Standard Term and Condition No. 55 is modified to read as follows:

55. TERMINATION FOR CONVENIENCE: Unless expressly provided for otherwise in the Contract, this Contract may be terminated in whole or part by the City for convenience upon ~~thirty (30)~~ TEN days written notice, without further penalty or

liability to Contractor. If this Contract is terminated, City shall be liable only for payment for satisfactory materials and/or services received and accepted by City before the effective date of termination. CONTRACTOR REMAINS SUBJECT TO CONTRACT UNTIL SUCH EFFECTIVE DATE.

Please note that purchases of equipment purchased pursuant to the Arizona State Contract ADSP013-055855, are subject to the termination clauses contained in that document (similar but different).

9. TIME IS OF THE ESSENCE. Time is of the essence, Contractor understands City will incur damages if project is not completed and operational within 84 weeks after completion of Phase PZ.

EXHIBIT B
CITY OF FLAGSTAFF STANDARD TERMS AND CONDITIONS

**EXHIBIT C
INSURANCE**